

**CASE NO. 29-RC-172410**  
**REQUEST FOR REVIEW**  
**EXHIBIT B-3**  
**(DECISION AND DIRECTION OF**  
**ELECTION CASE NO. 29-RC-172398)**

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**

NEW YORK METHODIST HOSPITAL AND  
MSO OF KINGS COUNTY, LLC, A SINGLE EMPLOYER

and

Case No. 29-RC-172398

1199 SEIU, UNITED HEALTHCARE WORKERS EAST

DECISION AND DIRECTION OF ELECTION

New York Methodist Hospital (“the Hospital”), is an acute care hospital located in Brooklyn, New York, where 1199 SEIU, United Healthcare Workers East (“1199” or “the Petitioner”) currently represents unit(s) of professional and non-professional employees.

MSO of Kings County, LLC (“MSO”) provides administrative/management services to the Hospital’s off-site centers and physician practices affiliated with the Hospital at various locations, including the Wound Care and Hyperbaric Center (“the Wound Care Center”) located at One Prospect Park West, Suite B, Brooklyn, New York.

1199 filed a petition in the instant case under Section 9(c) of the National Labor Relations Act (“the Act”) seeking to add certain nonprofessional employees employed by the Hospital/MSO at the Wound Care Center located at One Prospect Part West, Suite B, to its existing bargaining unit(s) of Hospital employees.<sup>1</sup> More specifically, the Petitioner seeks *Armour-Globe* self-determination election(s) in which employees in the classifications of office assistant, clinical assistant (LPN), and hyperbaric technician at the Wound Care Center located at One Prospect Park West would vote whether or not they wish to be included in existing Hospital

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<sup>1</sup> While the petition in the instant case indicated that the unit sought included “all full time and regular part time professional and nonprofessional employees employed by the New York Methodist Hospital/MSO of Kings County, LLC at Wound Care Center, 1 Prospect Part West, Suite B, Brooklyn, New York, residual to the existing professional and nonprofessional unit represented by 1199 SEIU at Methodist Hospital. [Titles to be included Office Assistant, Clinical Assistant, Office Manager, Licensed Practical Nurse and Certified Hyperbaric Technician],” the Petitioner clarified at the hearing (and in its Memorandum of Points and Authorities) that it seeks to add the petitioned-for employees to the existing unit(s) represented by the Petitioner at the Hospital by a self-determination election. At the hearing, the Petitioner stipulated that it was not seeking to represent the office manager or the clinical nurse (RN) at the Wound Care Center. Thus, the Petitioner conceded that the petitioned-for job classifications are not professional as stated in its petition. It is noted that on the same day the instant petition was filed, 1199 also filed a petition in Case No. 29-RC-172410 seeking to represent certain employees of the Hospital/MSO at the Urology Center located at One Prospect Park West, Suite C. Administrative notice of the record in that case is taken herein.

clerical and/or technical unit(s).<sup>2</sup> Should I find self-determination elections to be inappropriate, the Petitioner indicated a willingness to proceed to an election in any unit that I find appropriate.

The Petitioner named the Hospital/MSO as the Employer of the petitioned-for employees. In this regard, the Petitioner asserts that the Hospital employs the petitioned-for employees and that MSO is nothing more than a division or department of the Hospital, created as a “shell employer” for Hospital affiliated clinics and physician practices. In the alternative, Petitioner asserts that the Hospital and MSO constitute a single employer. MSO takes the position that it is the employer of the petitioned-for employees at the Wound Care Center; the Hospital contends that it is not the employer of such petitioned-for employees. Both the Hospital and MSO contend that the Hospital and MSO are not a single employer, joint employer or alter egos within the meaning of the Act. The Hospital and MSO also contend that a self-determination election is not permissible inasmuch as it could result in an overly broad unit consisting of employees of an acute care hospital and a non-acute care entity, and that the only appropriate unit is a stand-alone unit of MSO employees at the Wound Care Center.<sup>3</sup>

On April 5, 6, 7, 11, 12 and 13, a Hearing Officer of the Board held a hearing in this matter, the parties orally argued their respective positions prior to the close of the hearing and thereafter each submitted a Memorandum on Points and Authorities. I have considered the record and relevant law. For the reasons discussed below, I find that the Hospital and MSO constitute a Single Employer. I further find that separate self-determination elections are appropriate for the employees at the Wound Care Center wherein two separate voting groups, i.e., clerical employees and technical employees, will vote whether they wish to be included in the existing bargaining units of Hospital employees.

#### Background<sup>4</sup>

The Hospital operates a large acute care facility with 650 patient beds and a level one trauma center located at 506 Sixth Street, Brooklyn, New York. Off-site facilities providing health care services also operate under the Hospital’s Article 28 license.

MSO, a management services organization, was created in April 2010 by the Hospital to provide administrative services to physician practices affiliated with the Hospital.<sup>5</sup> MSO provides its services to health care facilities including the Wound Care Center and the Urology practice located at One Prospect Park West, Brooklyn, New York.<sup>6</sup>

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<sup>2</sup> See, *Globe Machine & Stamping*, 3 NLRB 294 (1937); *Armour & Co.*, 40 NLRB 1333 (1942); *Warner-Lambert Co.*, 298 NLRB 993 (1990). As described more fully below, the parties disagree as to whether there exists one combined unit of professionals and nonprofessionals inasmuch as they are all governed by the same collective bargaining agreement or whether there are a number of separate units which were certified by the Board. In this regard, at the hearing the Petitioner took the position that there was a combined unit of professionals and nonprofessionals. However, in its Memorandum of Points and Authorities, the Petitioner, while stating that all units it represents at the Hospital are covered by the same collective bargaining agreement, represents that if more than one unit exists at the Hospital, if the petitioned-for employees vote in favor of representation, they would join the appropriate unit or units.

<sup>3</sup> MSO concedes that a unit of the five MSO employees at the Wound Care Center would be an appropriate unit. It is not asserted that petitioned-for positions at all MSO locations should be included in an appropriate bargaining unit.

<sup>4</sup> I note that in this decision, while I sometimes refer to the petitioned-for employees and/or the employees at the Urology practice located at One Prospect Park West as “MSO employees,” such reference is not intended to indicate a finding as to whether or not the Hospital and MSO constitute a single employer.

As indicated above, the employees at issue work at the Wound Care Center in Suite B of a facility located at One Prospect Park West, which is about one mile away from the Hospital. The record evidence shows that health care services are provided in three other suites and an X-ray room at the One Prospect Park West location. Suite A (Pediatrics), Suite B (Wound Care Center and Foot and Ankle Center), Suite C (Urology), Suite D (the Spine and Arthritis Center) and the X-Ray room each have a separate entrance, through which patients can enter, along the main hallway. Although the X-ray facility has a door along the main hallway, it is part of Suite B and accessible through Suite B.

The Wound Care Center operates under the Hospital's Article 28 license, which is issued by the New York State Department of Health.<sup>7</sup> Three doctors work in the Wound Care Center: Dr. Mundy, Dr. Hubsher and Dr. Saltikov. They also work at the Hospital. It is undisputed that the doctors are not employees of MSO.

### Collective bargaining

The Hospital negotiates on a multi-employer basis with 1199 as a member of the League of Voluntary Hospitals and Homes of New York ("LVHH") in connection with service and maintenance, clerical, technical and professional units. It is noted that there is no unit description in the collective bargaining agreement effective June 9, 2009 through April 30, 2015 or the Memorandum of Agreement in effect through September 30, 2018. In this regard, the recognition clause of the collective bargaining agreement states that 1199 is recognized as the collective bargaining representative of all of the employees in the bargaining unit(s) set forth in Stipulation I (between the Hospital and 1199) to be annexed to the agreement. However, a completed Stipulation I is not annexed to the agreement in evidence as Union Exhibit No. 30. The record does contain a Stipulation I from 1987 and a previous version of Stipulation I from 1982. Stipulation I from 1987 states, "The bargaining unit(s) covered by 1199 in Methodist Hospital of Brooklyn referred to in Article 1 of the collective bargaining agreement between 1199 and the League of Voluntary Hospitals and Homes of New York are: (1) Service and Maintenance and (2) Technical and Residual Service and Maintenance."<sup>8</sup> Further, the record evidence indicates that pursuant to a stipulated election agreement, an election was held in Case No. 29-RC-9326, and 1199 was certified as the representative of all full-time and regular part time professional employees employed by the Employer in the following classifications at the Employer's 506 Sixth Street facility: laboratory techs, dieticians, social workers, recreational therapists, pharmacists, but excluding all other employees, guards and supervisors.<sup>9</sup> This professional unit is not reflected in the 1987 Stipulation I. I note here that 1199 contends that, inasmuch as all units are covered by the same collective bargaining agreement, there is one

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<sup>5</sup>The Hospital's tax documents state that MSO was established to provide administrative personnel to various professional corporations which are controlled tax exempt entities of the Hospital.

<sup>6</sup> While the parties stipulated to MSO having a location at One PPW, the evidence does not establish whether MSO owns the property, pays rent for the space at this location or whether there is some other arrangement in place.

<sup>7</sup> The Hospital's tax documents in evidence refer to the Wound Care Center as an extension clinic operated by the Hospital. The Hospital's Assistant Vice President also refers to the Wound Care Center as an extension clinic.

<sup>8</sup> Stipulation 1 from 1982 only contained the first category, i.e., Service and Maintenance.

<sup>9</sup> Another certification dated December 15, 2010, in Case No. 29-RC-11987, states that 1199 was designated by employees in the category of polysonographic technician and that 1199 may bargain for these employees as part of the existing technical employee bargaining unit it represented.

combined unit of professional and non-professional employees. However, the Hospital contends that 1199 represents separate units of employees previously certified by the Board and that there may be individual agreements that have been negotiated with respect to the separately certified units that are not contained in the one contract. While it is undisputed that all of the separately certified bargaining units fall within the coverage of the one contract, in light of the foregoing evidence of separate bargaining units and the fact that the collective bargaining agreement does not clearly indicate the existence of one combined unit of professional and non-professional employees, there is insufficient evidence on this record to find that the separate units have been effectively merged into a single unit. Rather, as more fully described above the 1987 description appears to set forth two numbered bargaining units – clerical and technical.

The evidence also shows that 1199 represents employees of the Hospital working at off-site facilities, including two Hospital employees (radiology technologists) who regularly take X-rays at the One Prospect Park West, Brooklyn, New York facility. In addition, other Hospital employees who work in the radiology department of the Hospital work in the X-ray room at One Prospect Park West as needed on a rotational basis.<sup>10</sup>

The Memorandum of Agreement effective through September 30, 2018, contains an Ambulatory and Primary Care Off-Site Agreement which applies to off-site / out-patient facilities providing ambulatory or primary care, including facilities covered by the Hospital's Article 28 license and physicians' offices with services similar to those provided in the Hospital. This agreement provides that employees of such off-site/ out-patient facilities shall be covered by the terms of the LVHH agreement except for certain modifications if the employees at those facilities vote to be represented by 1199;<sup>11</sup> and that local negotiations (i.e., between the Hospital and 1199) will be held on such "Employer specific terms." The agreement also provides that certain recognition procedures will apply to facilities that fall under the agreement, including that the Hospital will grant lawful recognition upon majority status for all employees employed in positions that appropriately fall within the bargaining unit represented by 1199SEIU at the main hospital campus. The agreement states that lawful recognition will be granted to all employees employed in *positions* that appropriately fall in the existing unit. Thus, the employees' positions or classifications are the controlling factor which the parties agreed upon to be the basis for whether the employees appropriately fall into the existing units. And the parties' dispute in the instant case is whether the Wound Care employees fall within the hospital contract units or belong in a separate unit.

### Single Employer Status

A single-employer relationship exists when two or more employing entities are a single-integrated enterprise. The Board applies four criteria to determine whether a single-employer relationship exists. These criteria are: (1) common ownership; (2) common management; (3)

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<sup>10</sup> While 1199 stated on the record (and in its memorandum) that it represents Hospital employees in Suite A (Ambulatory Pediatrics) and Suite D (Spine and Arthritis Center) at the One Prospect Park West facility, the Employer stated that it did not so stipulate and there is no record evidence to establish the Petitioner's claim.

<sup>11</sup> The modifications are with respect to three items: work rules adapted to the particular operations; health/pension benefits at a discount from LVHH level; and upon recognition, the first negotiated wage increase will be the most recent LVHH increase.

functional interrelation of operations; and (4) centralized control of labor relations. *Shane Steel Processing*, 353 NLRB 522 (2008); *Mercy Hospital of Buffalo*, 336 NLRB 1282 (2001). No single factor in the single-employer inquiry is deemed controlling; nor do all of the factors need to be present in order to support a finding of single-employer status. *Dow Chemical Co.*, 326 NLRB 288 (1998); *Flat Dog Productions, Inc.*, 347 NLRB 1179 (2006). “Rather, single-employer status depends on all the circumstances, and is characterized by the absence of the arm’s-length relationship found between unintegrated entities.” *Dow Chemical Co.*, 326 NLRB at 288.

Applying this standard to the facts in this case, I find that the Hospital and MSO constitute a single employer.

#### Common Ownership

MSO is 100% owned by the Hospital. The Hospital filed tax documents with the Internal Revenue Service stating that MSO is a “controlled entity” of the Hospital. Thus, the common ownership factor supports a single employer finding.

#### Common Management

The Hospital’s Senior Vice President of Finance is Michael Fagan. The Hospital’s Vice President of Human Resources is Dennis Buchanan. Fagan and Buchanan are the Officers of MSO.

The Hospital hired MSO’s Human Resources Partner, Joanne Kennedy. Kennedy reports to Fagan and Buchanan. Kennedy handles human resources functions for MSO. Kennedy does not manage financial operations for MSO;<sup>12</sup> Buchanan (who is both the Hospital’s Vice President of Human Resources and an officer of MSO) is responsible for MSO’s financial operations.

The Hospital’s Assistant Vice President of Ambulatory Sites, Jennifer Donovan, is in charge of off-site centers operating under the Hospital’s Article 28 license and physician practices affiliated with the Hospital, most of which are involved with MSO.<sup>13</sup> Donovan provides oversight on daily operations and regulatory issues related to the various off-sites including the Wound Care Center and New York Methodist Medical Associates (which encompasses the Urology Practice) at One Prospect Park West. Donovan works with managers of the off-site locations, i.e., Karen Chan (Director of the Wound Care Center) and Suzanne Dinnerstein-Wood (Office Manager of Brooklyn Urology), who are employed by MSO.<sup>14</sup> The Managers employed by MSO report to Donovan about the operations of the Wound Care Center

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<sup>12</sup> Kennedy is not aware as to whether MSO has malpractice insurance. She is unaware of MSO paying for training received by MSO employees from Cerner and other software companies and she is unaware of a contract between Consolidated Risk Management, a company that provides training to MSO employees twice a year. She does not know whether MSO leases the space at One Prospect Park West or whether it owns the building.

<sup>13</sup> Donovan referred to these doctor practices as “MSO doctor practices.” Donovan testified that she does not know if there is a contract or written agreement between the Hospital and MSO; she did not know who would know this information.

<sup>14</sup> According to the Hospital’s Assistant Vice President Donovan, Office Manager/Director Chan oversees the operations of the Wound Care Center and insures that Hospital policies are being followed on patient safety. At the hearing when asked whether she worked with a staff, Donovan replied that she has managers at the off-sites.

and the Urology practice. For example, when there was a flood at One Prospect Park West, the managers called Donovan and the Hospital temporarily relocated the Wound Care Center (but not the hyperbaric chamber), the Urology practice and the Spine and Arthritis Center. Donovan was present for State inspections of the Wound Care Center after the flood and she also came to the Wound Care Center in connection with complications related to paint color.

MSO employees Chan and Kennedy interview applicants and make decisions on hiring and firing employees at the Wound Care Center;<sup>15</sup> the Hospital provides an advisory role in such decisions and all changes in staffing are routed through the Hospital for approval.<sup>16</sup> Hospital Assistant Vice President Donovan testified that she signs off on hiring and firing decisions. And, as email between an MSO Office Manager and the Hospital's Director of Talent Acquisition shows, the Hospital advises MSO whether a candidate has accepted an offer of employment and their scheduled start date. (MSO Exhibit No. 8f) Further, Donovan and Vice President of Human Resources Dennis Buchanan approve personnel requisition forms. Donovan is also responsible for recruiting physicians for physician practices. Donovan reports to the Hospital's President and Chief Executive Officer, Mark Mundy.

Physicians who work in and are affiliated with the Hospital and who are not employed by MSO, give instructions to MSO employees at the Wound Care Center and the Urology practice located at One Prospect Park West and oversee their performance related to health care services being provided. MSO managers do not supervise patient care but do handle daily staffing issues. As noted above, Donovan recruits physicians for physician practices.

Thus, the officers of MSO also hold high level positions at the Hospital. And, while there is evidence that the MSO Office Managers of the sites involved in the instant case and in Case No. 29-RC-172410 handle day to day operations of the Wound Care Center and the Urology practice, they do so with oversight by the Hospital. MSO employees interview applicants for employment and make decisions on hiring and firing. However, the evidence also shows that a Hospital employee is consulted in an advisory capacity in these matters and such decisions are routed to the Hospital for approval by Hospital employees. Further, there is Hospital oversight by Donovan with regard to regulatory issues related to patient safety in offices with MSO management. Donovan, a Hospital employee is ultimately responsible for the off-site locations where MSO provides its administrative services. Accordingly, I find that the common management factor weighs in favor of finding a single employer. See e.g., *Grane Healthcare Co.*, 357 NLRB No. 123 (2011) ("advice" and "consultation" by parent company is exercise of control).

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<sup>15</sup> The record does not reveal specific evidence that any MSO employee was fired or issued written discipline. Kennedy testified that she does not have to clear hiring decisions with anyone.

<sup>16</sup> With regard to wage increases, MSO Human Resources Business Partner Kennedy worked with the Hospital's Human Resources Director Lucille Bock in comparing wages to the market wages for similar positions. Before the January 2016 wage increase, Kennedy also had discussions with Hospital Vice President of Human Resources Dennis Buchanan and Hospital Assistant Vice President Jennifer Donovan. Kennedy testified that the 3% yearly increase has been a practice at MSO since she was hired. Employee Status Change Forms in evidence indicate that the 3% wage increase for MSO employees in 2015 was approved by Hospital Assistant Vice President Jennifer Donovan or VP of Human Resources Dennis Buchanan. While Donovan testified that she does not approve hiring for the Wound Care Center, Hospital Human Resources representatives approve such action on documentation.

### Interrelation of Operations

As noted above, MSO was created in April 2010 by the Hospital. It provides administrative services to the Wound Care Center at issue in the instant case, which operates under the Hospital's Article 28 license and to physician practices affiliated with the Hospital. Thus, the petitioned-for employees work at the Wound Care Center, an extension of the Hospital's clinic.

MSO's address is the same address as the Hospital's address, 506 Sixth Street, Brooklyn, NY. MSO uses this address on its letterhead and various other documents. This is also the address information for MSO contained in the database of the Department of State, Division of Corporations. Employees' paystubs state MSO, in care of the Hospital, with the Hospital's 506 Sixth Street, Brooklyn, New York address. W4 forms and other tax forms are stamped indicating MSO with the Hospital's 506 Sixth Street address.<sup>17</sup> The Hospital's financial statements filed with the IRS indicate that, in 2010, the Hospital formed MSO, a management service organization established to provide administrative personnel to various professional corporations which are controlled tax exempt entities of the Hospital.<sup>18</sup> MSO is included in the Hospital's financial statements. Indeed the notes to the Hospital's consolidated financial statements refer to MSO as part of the reporting entity referred to as the Hospital.<sup>19</sup>

The Hospital's Human Resources department is located on the second and third floors of a building at 435 Ninth Street, Brooklyn, New York, about three blocks from the Hospital. MSO Human Resources Business Partner Joanne Kennedy's office is also located on the second floor of the same building.<sup>20</sup> Kennedy was hired by the Hospital for her MSO position. In this regard, Kennedy was interviewed by three Hospital employees and received an offer of employment letter from a Hospital employee, Danielle Hinkston, Manager of Talent Acquisition. A Hospital employee, Geina Keller, performed Kennedy's duties during the gap between Kennedy's predecessor leaving and Kennedy's hire.<sup>21</sup> Many human resources tasks regarding MSO employees are performed by the Hospital's Human Resources personnel. For example, the Hospital's Human Resources Associate completes a "Human Resources Entry Audit Check-off List" and enters data on individuals who are going to be hired into the Wound Care Center and

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<sup>17</sup> According to witness testimony, it appears that the W4 forms are so stamped after the employees sign the form inasmuch as witnesses indicate that the MSO stamp was not on the form when they signed it.

<sup>18</sup> The record evidence is insufficient to establish that the Urology practice at One Prospect Park West which is the subject matter of Case No. 29-RC-172410 is a controlled tax exempt entity of the Hospital inasmuch as the Consolidated Financial Statements do not name Brooklyn Urology, the name by which the Urology practice is referred to on the record. There is an indication by one employee witness that Brooklyn Urology's name changed, but a new name is unclear.

<sup>19</sup> More specifically, the notes to the Consolidated Financial Statements state that the reporting entity resulting from the consolidation of New York Methodist Hospital, South Brooklyn Health Center (through January 2012 inasmuch as SBHC was sold), the professional corporations and MSO is referred to in the consolidated financial statements as the Hospital. (Union Exhibit No. 37, notes page 9)

<sup>20</sup> There is no sign on Kennedy's door indicating MSO.

<sup>21</sup> Kennedy testified that before her hire, Erica Ostrowsky, HR Staff Relations Specialist, used to handle MSO's human resources and that Ostrowsky was her predecessor. It is noted that Kennedy and Ostrowsky do not have the same title. It is not entirely clear by whom Ostrowsky was employed. Indeed, Ostrowsky sent two emails to an employee hired to work at the Wound Care Center; the first email welcomed the employee to the Hospital and referred her to Hospital new hire paperwork and the second email welcomed her to MSO.



the Urology facility located at One Prospect Park West. Letters on MSO letterhead offering individuals employment with MSO have been prepared and signed by Hospital employees; Kennedy has also prepared these letters.<sup>22</sup> Additionally, MSO employees' I-9 Employment Eligibility Verification forms are signed by Hospital Human Resources personnel as the "Employer or Authorized representative." The I-9 forms in evidence are stamped either "N.Y. Methodist Hospital, Human Resources Dept." or "MSO of Kings County" with the Hospital's 506 Sixth Street address. The Hospital also provides employment verification forms for MSO employees. Further evidence of integration of the Human Resources department includes personnel documents of an MSO employee such as an IT-2104 form, Employee's Withholding Allowance Certificate, stamped by the Hospital's Human Resources Department with the Hospital's Identification Number. (MSO Exhibit No. 8f) And, MSO's HR Business Partner Kennedy uses the Hospital's copy machine to scan documents.

There is also evidence of interrelation of operations in connection with processing of payroll and providing pay to MSO employees. MSO Human Resources Business Partner Kennedy and MSO managers review the payroll to make sure the employees punch in and out on the Kronos system. From there, the Hospital's General Accounting Department combines Kronos with ADP and submits the information to the payroll company, ADP. MSO also sends direct deposit forms for its employees to the Hospital's general accounting department for processing. Record testimony and an MSO employee's bank statement indicate that the Hospital makes the direct deposit of the employee's paycheck.<sup>23</sup> MSO also submits requests for checks to pay temporary employees to Hospital Vice-president of Human Resources Dennis Buchanan.

Similarly, billing for the Wound Care Center and the Hospital are interrelated. The office assistant inputs a patient's name, insurance information and the diagnosis code provided by the doctor; the Hospital handles billing from there -- Hospital personnel finalize and send the bill to the insurance company for payment.

The Hospital is the policy holder for health benefit plans provided to MSO employees. The Hospital is also the policy holder for the Davis Vision Plan and the Guardian Dental Plan provided to MSO employees. MSO has Workers' Compensation Insurance under the Hospital's plan. MSO employees file disability claims with the benefits department of the Hospital.

MSO employees working at One Prospect Park West refer patients who need an X-ray to the Hospital's radiology technologist at One Prospect Park West. The X-Ray room is one of the rooms in Suite B; equipment used by the radiology technologists is in the hallway inside the Wound Care Center, Suite B. The radiology technologist stands in the hallway of Suite B when taking an X-ray. The X-ray room can be accessed through Suite B (the Wound Care Center) or the main hallway outside Suite B.<sup>24</sup> Patients referred to the Hospital's X-ray room from the Wound Care Center wait in the Suite B waiting room and the Radiology technologist calls the patient from the waiting room at Suite B. Patients from the other suites wait in a small waiting area near Suite A. The petitioned-for employees of the Wound Care Center interact with the

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<sup>22</sup> Hospital employees have access to MSO's template on the Position Manager Applicant Tracking System. 599-600

<sup>23</sup> An MSO employee's bank statement in evidence has the entry "EFT ACH New York Methodist Hospital direct deposit, 160128." (Union Exhibit No. 7)

<sup>24</sup> There is a sign over the door from the main hallway that says "X-ray room."

Hospital's X-Ray technologist. In this regard, the radiology technologist comes to the office assistant in the Wound Care Center to get a print-out of patient information of patients that have been referred from the Wound Care Center; the office assistant also asks the X-Ray tech for X-Ray reports that they have not received yet and they see the X-Ray techs at the beginning of the day and the end of the day when they sign in and out at the computer in the Wound Care Center. The Hospital's radiology technologist sometimes translates for the doctors in the Wound Care Center to communicate with patients. The radiology technologist tells her supervisor at the Hospital and the office assistant at the front desk if she is not going to be in. She eats lunch in the Suite B kitchen. MSO does not have a contract or a lease agreement in connection with the Hospital's X-ray facility which has X-ray equipment within Suite B.

MSO Wound Care employees punch in on the Kronos software system on a computer in their office. Hospital employees (Radiology technologists) working in the X-Ray room at One Prospect Park West also punch in on the computer in the Wound Care Center. The Radiology technologist enters her office at One Prospect Park West through Suite B, the Wound Care Center.

The Hospital's biomedical technician services equipment in all four suites at the One Prospect Park West facility, including the Wound Care Center. He also performed an inventory of all equipment for the Hospital. MSO's Kennedy did not know whether MSO owns the equipment at either the Wound Care Center or the Urology practice at One Prospect Park West.

MSO employees access patient records from the Hospital on computers in the facility at One Prospect Park West.

MSO employees at One Prospect Park West order certain drugs and supplies from the Hospital pharmacy. An LPN testified that she faxes the order to the Hospital pharmacy and sometimes talks to the Hospital employees if there is a question about the order and the Office Manager/Director is not available. There is no evidence of the Hospital billing MSO for these supplies.

With regard to services, a Courier who is a Hospital employee, Mark (LNU), picks up mailings, dirty laundry and tools for sterilization from the Wound Care Center and returns clean laundry and tools. Wound Care employees order juice and cookies (for patients) from the Hospital kitchen. Hospital employee Mark also picks up and delivers documents/interoffice mail to and from the Hospital. If there is an information technology problem at the office, MSO Wound Care employees call the Hospital's IT department for help. One example was provided where an employee wearing Hospital ID with blue band came to fix the printer at the Wound Care Center.<sup>25</sup>

The Hospital's website has a section for MSO where individuals can apply for MSO positions.

Thus, the evidence shows that the Hospital and MSO have interrelated operations and I find this factor supports a finding that the Hospital and MSO constitute a single employer. See

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<sup>25</sup> There is no evidence that MSO is billed for these services.

e.g. *Emcor Corp*, 330 NLRB 849 fn. 1 (2000) (fact that bookkeeper for one company performed payroll functions for both companies cited as evidence of interrelation of operations).

### Centralized Control of Labor Relations<sup>26</sup>

In 2011, Dennis Buchanan (Hospital Vice President of Human Resources and officer of MSO) came to the facility at One Prospect Park West and asked Hospital employees working in the medical suites who, up until that point, were paid by the Hospital to fill out new W2, W4 and I-9 forms for MSO. They were not asked to fill out new applications for employment and there was no indication that employees were undergoing a hiring process. There was no indication of a change in policies or procedures.<sup>27</sup>

As stated above, the Hospital hired MSO Human Resources Business Partner Joanne Kennedy and her office is located amongst offices of Hospital Human Resources employees at 435 Ninth Street in Brooklyn, New York.

The Hospital's website is connected to the on-line application for MSO employees.<sup>28</sup> Applicants for employment are interviewed by MSO employees at the One Prospect Park West and 435 Ninth Street facilities in Brooklyn, New York. There is also testimony that one current MSO employee was interviewed by an MSO Manager at the Hospital's 506 Sixth Street address. The evidence shows that MSO candidates also meet with a doctor from the practice during the interview process. MSO representatives make decisions on hiring, subject to the approval of the Hospital. However, the evidence does not indicate any instance where the Hospital did not approve MSO's decision to hire. As indicated above, Jennifer Donovan, the Hospital's Assistant Vice President of Human Resources, provides an "advisory role" in hiring and firing employees. While Donovan testified that she does not make decisions related to hiring and firing, the evidence shows she signs (in areas designated for approvals) various MSO forms, such as Personnel requisitions and Employee Status Change Forms for wage increases and upgrading an MSO position. Significantly, other Hospital Human Resources representatives, including Hospital Vice President of Human Resources Dennis Buchanan, sign off in HR Approval areas on MSO New Hire Authorization forms.

Both MSO Human Resources representative Kennedy and Hospital Human Resources representatives sign human resource documents in connection with MSO employees, such as letters on MSO letterhead offering employment with MSO,<sup>29</sup> Notice of Acknowledgement of

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<sup>26</sup> While I make reference to the Wound Care Center specifically herein, the record in Case No. 29-RC-172410 indicates the same type of centralized control of labor relations in connection with the Urology practice at One PPW.

<sup>27</sup> The testimony indicates that employees were not specifically told that MSO would be their new employer. Record testimony also shows that the employees were not advised of any new policies or procedures and they were not given a new employment application form.

<sup>28</sup> In this regard, various MSO employees testified about learning of and/or applying for their position through the Hospital's website. MSO Exhibit 8(m) shows a Hospital listing for a position at an MSO facility. MSO Human Resources Business Partner Kennedy testified that the on-line application is located on the MSO portion of the Hospital's website. While the printed employment applications identify MSO, the testimony indicates that was not apparent when filing out the on-line application.

<sup>29</sup> The offer letter indicates that the employment relationship can be terminated by either party at any time subject to "Hospital policy."

Pay Rate and Pay Day forms and Employment Eligibility Verification I-9 forms. Indeed, a Hospital Human Resources representative (Geina Keller, Assistant Director of Talent Acquisitions) filled in to perform MSO Human Resources functions for a period before Kennedy was hired. Further, the documentary evidence also shows that an Information Systems Confidentiality Agreement for an MSO employee was reviewed and signed by a representative of the Hospital, Dynasty Gonzalez, Talent Acquisition Coordinator. The Hospital also provides employment verifications for MSO employees.<sup>30</sup>

The Hospital processes workers' compensation and disability claims of MSO employees. The Hospital is the policy holder of disability insurance and workers' compensation insurance covering MSO employees; the Hospital's Human Resources department processes MSO employees' disability claims. In this regard, employees give requests for leave to the office manager; the request is passed to the Hospital's leave department. As noted above, the Hospital is also the policy holder for health benefit plans provided to MSO employees and the Davis Vision Plan and the Guardian Dental Plan provided to MSO employees. I note that the Hospital offers different health insurance benefits to employees working at the Hospital.

As stated above, with regard to wage increases, MSO Human Resources Business Partner Kennedy worked with the Hospital's Human Resources Director Lucille Bock in comparing wages to the market wages for similar positions. Before the January 2016 wage increase, Kennedy also had discussions with Hospital Vice President of Human Resources Dennis Buchanan<sup>31</sup> and Hospital Assistant Vice President Jennifer Donovan. Kennedy testified that the 3% yearly increase has been a practice at MSO since she was hired. Employee Status Change Forms in evidence indicate that the 3% wage increase for MSO employees in 2015 was approved by Hospital Assistant Vice President Jennifer Donovan or VP of Human Resources Dennis Buchanan. Employee Status Change forms for MSO employees taking leave are approved by Kennedy and Hospital Vice President of Human Resources Buchanan.

With regard to the payment of wages to MSO employees, New Hire Authorization forms which contain MSO's name in the top left hand corner must be processed through MSO and the Hospital in order for MSO employees to be paid. More specifically, New Hire Authorization Forms are created in the software program "Reportsmith," with information received from ADP. MSO's Kennedy prints and signs the New Hire Authorization form and then the Hospital's Human Resources Director signs the form indicating approval.<sup>32</sup>

The Hospital processes MSO employees' requests for direct deposit of MSO employees' pay checks and for the Hospital credit union.

The record contains copies of agreements to comply with the Hospital's privacy policy signed by MSO employees. More specifically, in 2010, an MSO employee signed an agreement entitled "MSO of Kings County Information System Confidentiality Agreement" and in 2015, an

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<sup>30</sup> MSO employees can also obtain employment verification from the Hospital's website.

<sup>31</sup> It is noted that Buchanan is also an officer of MSO.

<sup>32</sup> Union Exhibit No. 32 is a New Hire Authorization form signed by HR Staff Relations Specialist Ostrowsky and the Hospital's Vice President of Human Resources, Dennis Buchanan. Other such forms have been signed by MSO's Kennedy and Hospital employees Geina Keller for Lucille Bock. (Union Exhibit 34)

MSO employee signed a similar agreement entitled "New York Methodist Hospital Information System Confidentiality Agreement" which refers to the employee as a hospital employee/provider and states that they hold a position of trust. Further, the agreement states, the employee/provider is familiar with the Hospital's policies on privacy and confidentiality and that they understand that inappropriate disclosure and or access of confidential information will result in disciplinary action including loss of access to the Hospital Information System and possible termination.

A Hospital Human Resources employee at 435 Ninth Street issues Hospital identification to MSO employees. In this regard, employees of the Wound Care Center at One PPW are provided identification badges that state "NYM, New York Methodist Hospital" these badges are the same as the identification of Hospital employees except that employees of MSO Wound Care have a yellow band of color and Hospital employees have a blue band.<sup>33</sup>

Newly hired MSO employees attend the Hospital's New Employee Orientation with Hospital employees. Employee testimony indicates that all attendees of the orientation received the same packet of documents including a Hospital new employee orientation handbook and various policies and procedures.<sup>34</sup> MSO employees undergo a drug test and a physical at the Hospital's Employee Health Services located at the Wesley House. An MSO employee testified that when hired, she was told that MSO was "for non-union" and was not told that MSO was not part of the Hospital.

Wound Care employees receive training at the Hospital on the Eagle software system which is used at the Wound Care Center for registering patients and creating a medical record number for billing to insurance. They are also trained at One Prospect Park West on the Cerner software and Emergency procedures from individuals wearing Hospital identification.

MSO employees have access to the Hospital's tuition reimbursement benefit program which provides reimbursement of up to \$9,000 from the Hospital for taking classes related to their job in exchange for a promise to work for two years. The applicant downloads the form from the Hospital website, completes it and faxes it to the Hospital's Human Resources department.

The Hospital's Assistant Vice President and the Director/Office Manager of the Wound Care Center both signed letters to the staff of the Wound Care Center and to the staff of the Urology practice, dated March 17, 2016, on MSO letterhead, with the Hospital's address, stating, among other things, that 1199 requested an election, noting employees' rights in this situation and asking them to consider all the facts in this major decision. The letters were signed by both Assistant Vice President of the Hospital Jennifer Donovan and Office Manager/Director of Wound Care Center Karen Chan.<sup>35</sup>

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<sup>33</sup> Kennedy testified that the yellow indicates contractor status.

<sup>34</sup> An employee of the Wound Care Center testified that she was advised at orientation that the health insurance did not apply to her since she was "MSO." This witness testified that she was not advised that any other policies did not apply to her at orientation. This witness received the sick leave policy at her interview.

<sup>35</sup> Donovan signed as "Assistant Vice President" and Chan signed as "Director."

Thus, the evidence shows that, inter alia, MSO's Human Resources Business Partner has an office in the same building and on the same floor as the Hospital's human resources department; that the Hospital's human resources department performs various human resources tasks for MSO; notices for MSO employee positions are posted under the Hospital's name and on the Hospital's website; MSO employees can access their employment information from the Hospital's website; MSO employees attend Hospital employee orientation with Hospital employees; MSO employees in the Wound Care Center attend training at the Hospital; the Hospital is the policy holder for benefits provided to MSO employees; and MSO employees are eligible for Hospital tuition reimbursement benefits. While it is noted that MSO makes decisions on day to day staffing and on hiring and wage increases, the Hospital's approval is required for all employee status changes. In the circumstances herein, I find that the evidence of centralized control of labor relations weighs in favor of single employer status.<sup>36</sup>

Further, the record evidence shows that there is an absence of an arm's length relationship between the Hospital and MSO. For example, the Hospital's accounting department performs payroll functions for MSO, the Hospital's billing department performs billing functions for MSO, the Hospital representatives must approve all MSO personnel actions that require expenditures such as new hire authorizations and pay increases, the Hospital hired MSO's Human Resources Business Partner; and the Hospital performed the duties of MSO's Human Resources Partner during a gap after her predecessor left and before she was hired. I also note that Hospital refers to MSO as a controlled entity in its tax filings.

In light of the foregoing, including the evidence that the Hospital wholly owns MSO; that MSO's officers are also the Hospital's Senior Vice President of Finance and the Hospital's Vice President of Human Resources; that the Hospital performed MSO's human resources functions during a period of time before the Hospital hired MSO's Human Resources Business Partner, that the Hospital's approval is required on employee status changes such as hiring and wage increases; that the Hospital's general accounting department processes MSO's payroll; that the Hospital is the policy holder for MSO's health benefits and MSO employees are covered under the Hospital's disability and workers' compensation insurance; and noting that the Hospital's tax documents in evidence indicate that MSO is a controlled entity of the Hospital and that it is part of the Hospital as a reporting entity, I find that the four factors of single-employer status are present and support a finding that the Hospital and MSO constitute a single employer.

### **The Appropriate Unit**

It is well settled that a petitioned-for unit need only be *an* appropriate unit, not the only or the most appropriate unit. See *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934, 940 (2011).

A self-determination election, also referred to as an *Armour-Globe* election, is the proper method by which a union may add unrepresented employees to an existing unit. See, *Globe Machine & Stamping*, 3 NLRB 294 (1937); *Armour & Co.*, 40 NLRB 1333 (1942); *Warner-*

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<sup>36</sup> While the Petitioner seeks a number of adverse inferences be drawn based on the Hospital's/MSO's failure to comply with subpoenas, I make the above findings on the record evidence and find it unnecessary to draw adverse inferences.

*Lambert Co.*, 298 NLRB 993 (1990). The petitioned-for employees need not constitute a separate appropriate unit by themselves in order to be added to an existing unit. *Warner-Lambert Co.*, *supra*; *St. Vincent Charity Medical Center*, 357 NLRB No. 79 (2011). Further, a self-determination election may be appropriate regardless of whether the petitioned-for employees may be found to be a separate appropriate unit. *Great Lakes Pipe Line Co.*, 92 NLRB 583, 584 (1950). The appropriateness of a self-determination election depends on the extent to which the employees to be included share a community of interest with the existing unit of employees and whether they constitute an identifiable, distinct segment so as to constitute an appropriate voting group. *St. Vincent Charity Medical Center*, *supra*.

In determining whether a petitioned-for multi-facility unit is appropriate, the Board evaluates the following community-of-interest factors among employees working at the different locations: similarity in employees' skills, duties, and working conditions; centralized control of management and supervision; functional integration of business operations, including employee interchange; geographic proximity; bargaining history; and extent of union organization and employee choice. *Exemplar, Inc.*, 363 NLRB No. 157 (2016); *Clarian Health Partners, Inc.*, 344 NLRB 332, 334 (2005).

The Petitioner seeks self-determination elections in separate voting groups pursuant to *Armour-Globe* to determine whether the office assistants, clinical assistants (LPNs) and hyperbaric technologist employed by the Hospital/MSO (herein collectively referred to as the Employer) at One Prospect Park West wish to be included in the corresponding existing units of clerical and technical employees. The Petitioner does not seek to create separate, additional units. In these circumstances, the proper analysis is whether the employees in the proposed voting group share a community of interest with the currently represented employees and whether they constitute an identifiable, distinct segment. *St. Vincent Charity Medical Center*, 357 NLRB No. 79 (2011).

I note that the Employer, in its Memorandum of Points and Authorities asserts that the petitioned-for unit “violates the Board’s well-established single-facility presumption.” However, when a union seeks to represent a multi-facility unit, the presumptive appropriateness of a single-facility unit is inapplicable. See *Sleepy’s Inc.*, 355 NLRB 132 (2010); *Capital Coors Co.*, 309 NLRB 322, fn. 1 (1992). Instead, the Board applies its traditional community-of-interest analysis.

It is further noted that the Board’s Health Care Rule does not address the issue of the appropriateness of a single facility when an employer owns a number of facilities, which the Board continues to address through adjudication. See e.g., *Presbyterian Hospital* 88 F. 3d 1300 (3<sup>rd</sup> Cir. 1996). Thus, inasmuch as the Health Care Rule does not resolve issues of multiple facilities of a single employer hospital, analysis regarding the number of facilities to be included in a unit of technical employees or clerical employees is still appropriate.

The parties stipulated that the clinical assistant (LPN) and the hyperbaric technologist are both technical positions. The parties also stipulated that the office assistant is a clerical position. At the hearing, the Employer indicated that such positions would appropriately be included in the existing technical and clerical units but stated that a self-determination election here would not

be appropriate because: (1) the separate unit of Wound Care employees at One Prospect Park West was appropriate; (2) there would be undue proliferation of the bargaining unit; and (3) there is a lack of a community of interest between the employees working in the Wound Care Center at One Prospect Park West and the employees in the existing unit. With regard to the first argument, as noted above, a self-determination election may be appropriate regardless of whether the petitioned-for employees may be found to be a separate appropriate unit. *See, Great Lakes Pipe Line Co., supra.* With regard to the argument that a self-determination election would cause undue proliferation of the bargaining unit, such an election would seek to add the clerical and technical positions herein to the existing clerical and technical units rather than creating an additional, residual unit. *See e.g., St. Vincent Charity Medical Center, supra.* With regard to the third argument, the evidence shows that there are bargaining unit employees working at the One Prospect Park West facility.<sup>37</sup> In this regard, there are radiology technologists working for the Hospital at the One Prospect Park West facility.

Further, the Memorandum of Agreement effective through September 30, 2018, shows that the Hospital, through LVHH, agreed that certain recognition procedures would apply to off-site/outpatient facilities operating under the Hospital's Article 28 license providing ambulatory or primary care under the Hospital. Indeed, the agreement noted that the Hospital would grant lawful recognition upon majority status for all employees in positions that appropriately fall within the bargaining unit represented by 1199 at the main hospital campus.<sup>38</sup> The agreement recognized certain differences, such as the fact that the off-site facilities are not 24/7 operations, in noting that the employees shall be covered by the collective bargaining agreement, except as modified as to three specified items.

Accordingly, the evidence indicating a history of 1199 representing Hospital employees at One Prospect Park West, and the evidence that the Hospital (through LVHH) has bargained with 1199 concerning the shift to out-patient care delivered at off-site outpatient facilities and the application of the contract to employees working at such facilities, combined with my finding herein that the Hospital and MSO are a single employer, favor a finding that the self-determination elections in the two separate voting groups are appropriate. Furthermore, since the Wound Care Center is an extension of the Hospital's clinic, employee skills and duties are similar. The Wound Care Center at One Prospect Park West is only about one mile away from the Hospital. The Wound Care employees are subject to many Hospital policies and share similar benefits as the Hospital employees, such as tuition reimbursement. The Hospital's general accounting department processes the Wound Care employees' payroll; the Hospital's leave department processes the Wound Care employees' leave; the Hospital finalizes billing and sends requests to the insurance company for payment; and, the Wound Care employees refer about 10 to 15 patients a day to the Hospital's X-ray room. And, while there is no evidence of employee interchange, the petitioned-for employees have daily contact with Hospital employees, such as the Hospital's courier and the radiology technologists. In this regard, one radiology technologist testified that she has contact with Wound Care employees when she asks them for

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<sup>37</sup> As noted above, while the Petitioner asserts that it represents employees at the Ambulatory Pediatrics suite and the Spine and Arthritis suite at One Prospect Park West, the Employer stated that it did not stipulate to such and there is no record evidence to establish the Petitioner's claim.

<sup>38</sup> As indicated, the Employer agreed the positions at issue here would appropriately fall within the existing clerical and technical units.



the patient information on individuals who are waiting for X-rays, she accesses her work area through the Wound Care Center; she signs in and out at the Wound Care Center; she eats lunch in the kitchen in the Wound Care Center; and, she translates for doctors at the Wound Care Center at times. Further, while there is local autonomy on day to day staffing issues and hiring decisions, Hospital representatives finalize all employee status changes and wage increases. Thus, I find that the Wound Care employees at One Prospect Park West share a community of interest with the Hospital employees.

I also find that the clinical assistants (LPNs) and the hyperbaric technologist constitute a distinct, identifiable segment of the Employer's unrepresented employees. This voting group is identifiable based on skill, classification and function. The clinical assistants and the hyperbaric technologist are classified as technical employees and they work in the same suite at the One Prospect Park facility. The voting group description is sufficient to specify the employees the Petitioner seeks to include. Similarly, the office assistants constitute a distinct, identifiable voting group. The parties agree that office assistants are clerical employees. It is clear which classification, i.e., office assistant, is in the voting group; the voting group is sufficient to specify the employees the Petitioner seeks to include. See *DPI Secuprint, Inc.*, 362 NLRB No. 172 fn. 10 (2015) (A group is "identifiable" so long as its description is sufficient to specify the employees the petitioner seeks to include).

### **Conclusions**

Based upon the entire record in this matter and for the reasons set forth above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Hospital and MSO, herein collectively referred to as the Employer, constitute a single employer. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.<sup>39</sup>
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

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<sup>39</sup> The parties stipulated that New York Methodist Hospital, a New York not for profit corporation, with a location at 506 Sixth Street, Brooklyn, New York, is engaged in providing health care services, as an acute care hospital. During the past year, which is representative of its annual operations generally, New York Methodist Hospital derived gross annual revenues in excess of \$250,000 and purchased and received at its 506 Sixth Street facility, goods and materials valued in excess of \$5,000 from persons outside the State of New York. The parties also stipulated that MSO of Kings County, LLC, a New York limited liability corporation, with a location at One Prospect Park West, Brooklyn, New York, is a management services organization engaged in providing administrative services to physician practices. During the past year, which is representative of its annual operations generally, MSO of Kings County, LLC derived gross annual revenues in excess of \$250,000 and purchased and received at its One Prospect Park West facility, goods and materials valued in excess of \$5,000 from persons outside the State of New York.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following groups of employees of the Employer constitute appropriate voting groups for purposes of the self-determination elections directed herein:

#### Voting Group A

All full-time and regular part-time office assistants employed by the Employer in its Wound Care and Hyperbaric Center located at One Prospect Park West, Brooklyn, New York, excluding all other employees, guards, and supervisors as defined in Section 2(11) of the Act.

If a majority of the valid ballots in the election are cast for the Petitioner, the employees in the above appropriate voting group will be deemed to have indicated their desire to be included in the existing clerical employee bargaining unit currently represented by the Petitioner, and it shall bargain for those employees as part of that unit. If a majority of the valid ballots are cast against representation, the employees will be deemed to have indicated their desire to remain unrepresented, and I will issue a certification of results of election to that effect.

#### Voting Group B

All full-time and regular part-time clinical assistants (LPNs) and hyperbaric technologists employed by the Employer in its Wound Care and Hyperbaric Center located at One Prospect Park West, Brooklyn, New York, excluding all other employees, guards, and supervisors as defined in Section 2(11) of the Act.

If a majority of the valid ballots in the election are cast for the Petitioner, the employees in the above appropriate voting group will be deemed to have indicated their desire to be included in the existing technical employee bargaining unit currently represented by the Petitioner, and it shall bargain for those employees as part of that unit. If a majority of the valid ballots are cast against representation, the employees will be deemed to have indicated their desire to remain unrepresented, and I will issue a certification of results of election to that effect.

#### Direction of Election

The National Labor Relations Board will conduct secret ballot elections among the employees in the voting groups found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by **1199 SEIU, United Healthcare Workers East**.

### **A. Election Details**

The elections will be held simultaneously on **June 17, 2016**, from 10:00 a.m. to 11:00 a.m., in the Kitchen of Suite B at the Employer's facility located at One Prospect Park West, Brooklyn, New York.

### **B. Voting Eligibility**

Eligible to vote are those in the voting group who were employed during the payroll period ending **May 28, 2016**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible to vote are all employees in the voting group who have worked an average of four (4) hours or more per week during the 13 weeks immediately preceding the eligibility date for the election.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

### **C. Voter List**

As required by Section 102.67(l) of the Board's Rules and Regulations, for each election, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, each of the lists must be *received* by the regional director and the parties by **June 6, 2016**. Each list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on

the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

#### **D. Posting of Notices of Election**

Pursuant to Section 102.67(k) of the Board's Rules, for each of the voting groups, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees.

The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

#### **RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlrb.gov](http://www.nlrb.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated, the 2nd day of June, 2016.

Handwritten signature of James G. Paulsen in black ink. The signature is cursive and includes the initials "JG Paulsen" followed by a stylized "by KDK" in the bottom right corner.

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James G. Paulsen  
Regional Director, Region 29  
National Labor Relations Board  
Two MetroTech Center, 5th Floor  
Brooklyn, New York 11201